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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/814,385	03/31/2004	Loren Broady	Brdy-001U	5525
42586	7590	06/16/2005	EXAMINER	
THOMAS P. GRODT FOREMAN CORCORAN TORR GRODT & GERRIN, PA P. O. BOX 1330 74 GILCREST ROAD LONDONDERRY, NH 03053			CRANE, DANIEL C	
			ART UNIT	PAPER NUMBER
			3725	
DATE MAILED: 06/16/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/814,385

Applicant(s)

BROADY, LOREN

Examiner

Daniel C. Crane

Art Unit

3725

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3,8 and 11-15 is/are rejected.
- 7) ☒ Claim(s) 4-7,9 and 10 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>3/31/2004</u> . | 6) <input type="checkbox"/> Other: ____.  |

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## **BASIS FOR REJECTIONS**

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

## **REJECTION OF CLAIMS OVER PRIOR ART**

Claims 1-3 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by White (4,876,877). White shows straightening/bending tool for shaping a shaft 26 by a portable implement having a linkage 12 and an extensions module 14. The tool is constructed to exert a force against a portion of the lower part of the shaft by grips 18, 20 and a portion of the shaft end by grip 52, which is mounted to the headpiece (unlabeled) of the linkage 12. The headpiece is provided with a C-shaped grip 52 (see Figure 3) for securing the shaft 26 between an upper surface and a lower surface during the various bending stages. A recitation of the intended use of the claimed invention (i.e. "propeller drive shaft") must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. See *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 312 F.2d 937, 939, 136 USPQ 458, 459 (CCPA 1963).

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Claims 1-3, 8 and 11-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Barber (2,596,976). Barber shows a straightening tool for shaping shafts 12 where a mobile extension module 17 exerts a force against a portion of a "unit" 13 and transfer the force to the shaft 12 through the linkage 5, 14, 16. See the above paragraph for a discussion as to the reliance on the intended use. As to claims 14 and 15, it is the examiner's position that the positioning of the tool on a solid surface adjacent the shaft, whether it be the ground 13, a boat, a body panel, a frame, would not be a definitive limitation that defines the part of the tool when the tool can be mounted anywhere that a solid surface will accommodate it. Accordingly, claims 14 and 15 are met by Barber since Barber's tool can be situated against any solid surface so as to facilitate the bend in the shaft.

#### **INDICATION OF ALLOWABLE SUBJECT MATTER**

Claims 4-7, 9 and 10 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### **PRIOR ART CITED BY EXAMINER**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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## **RESPONSE BY APPLICANT(S)**

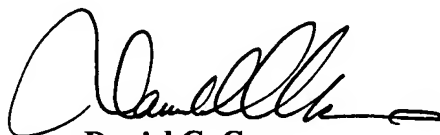
Applicant(s) response to be fully responsive and to provide for a clear record must specifically point out how the language of the claims patentably distinguishes them from the references, both those references applied in the objections and rejections and those references cited in view of the state of the art in accordance with 37 CFR 1.111 (a), (b) and (c).

## **INQUIRIES**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner D. Crane whose telephone number is **(571) 272-4516**. The examiner's office hours are 6:30AM-5:00PM, Tuesday through Friday. The examiner's supervisor, Mr. Derris Banks, can be reached at **(571) 272-4419**.

Documents related to the instant application may be submitted by facsimile transmission at all times to Fax number (703) 872-9306. Applicant(s) is(are) reminded to clearly mark any transmission as "DRAFT" if it is not to be considered as an official response. The Examiner's Fax number is **(571) 273-4416**.

DCCrane  
June 12, 2005



**Daniel C. Crane**  
Primary Patent Examiner  
Group Art Unit 3725